

*National Labor Relations Board*  
**OFFICE OF THE GENERAL COUNSEL**  
**Advice Memorandum**

**DATE:** March 10, 1995

**TO:** William C. Schaub, Regional Director, Region 7

**FROM:** Robert E. Allen, Associate General Counsel, Division of Advice

**SUBJECT:** Villa Elizabeth, Inc., Case GR-7-CA-36700

177-8520-0800, 177-8520-4700, 177-8540-8050, 177-8580-8050

This case was submitted for advice as to whether the Charging Party, an LPN charge nurse, was a statutory supervisor in light of Health Care.<sup>(1)</sup>

Although the Charging Party became a day shift floor supervisor for three or four days a week in March 1994, by July this assignment was reduced to every other weekend, and once or twice a week to cover for absences, and she resumed her LPN charge nurse duties on the day shift. The Employer's facility is divided into five units on two halls with a charge nurse and two or three aides assigned to each unit and, on the day shift, there is a floor supervisor as well as three levels of authority above the floor supervisor, except on weekends. The DON prepares weekly work schedules for nurses and aides, and daily rosters indicating the hall to which they are assigned for each shift. The DON and floor supervisors maintain adequate staffing by asking aides to work overtime and report for work on days off to cover for absences, and they handle requests for time off.<sup>(2)</sup> The charge nurses on each hall decide among themselves the unit where each aide works, and these assignments are made for extended periods to ensure familiarity and consistency. Charge nurses also give aides daily work assignments by giving them sheets containing the routine tasks associated with each group of residents; make sure that assignments are completed by, if necessary, asking an employee to assist another; and determine when aides take their breaks. Additionally, charge nurses can independently issue disciplinary warnings for not performing assigned duties, but the Employer states that any disciplinary suspensions are separately investigated and determined by management officials; that charge nurses play no role in discharging or hiring; and that the evaluations prepared by charge nurses do not impact an aide's employment status.

We conclude, in agreement with the Region, that the Charging Party is not a statutory supervisor. Assuming that floor supervisors use independent judgment in performing Section 2(11) assignment functions, the Charging Party's work as floor supervisor a few days a month was too limited and sporadic to confer upon her true supervisory status.<sup>(3)</sup> With respect to assigning aides to resident groups and giving them daily work tasks, charge nurses engage in mere task direction, have no authority to grant employees overtime or time off from work, and therefore neither "assign" nor "responsibly direct" aides using "independent judgment" as those terms have been argued by the General Counsel.<sup>(4)</sup> Finally, since the issuance of disciplinary warnings and evaluations by charge nurses result in no personnel actions affecting an employee's employment status or wage rates, neither the warnings<sup>(5)</sup> nor the evaluations<sup>(6)</sup> constituted supervisory authority.

R.E.A.

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<sup>1</sup> NLRB v. Health Care & Retirement Corp., 114 S.Ct. 1778 (1994).

<sup>2</sup> There is some evidence that employees are requested to work extra pursuant to an established Employer procedure, and nurses perform additional tasks if replacements cannot be found.

<sup>3</sup> See Marion Rohr Corporation, 261 NLRB 971, 972 (1982). We also note that the evidence is unclear as to whether other charge nurses work as floor supervisors on weekends or occasionally work in that capacity; if so, then such rotation further militates against finding supervisory authority. See National Broadcasting Co., 160 NLRB 1440, 1441-42 (1966) (rotating "deskmen" not supervisors where, inter alia, 5 of 6 newsmen "regularly perform work as deskmen and as newsmen under deskmen").

<sup>4</sup> See the General Counsel's brief in Providence Hospital, 19-RC-12866, and Ten Broeck Commons Nursing Home, 3-RC-10166, filed October 24, 1994.

<sup>5</sup> See Waverly-Cedar Falls Health Care, 297 NLRB 390, 392 (1989), 298 NLRB 997 (1990), enfd. 933 F.2d 626 (8th Cir. 1991); Northerest Nursing Home, 313 NLRB 491, 497 (1993).

<sup>6</sup> See Northerest, supra, 313 NLRB at 498 and cases cited.